DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI60

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status and Reintroduction of Black-Footed Ferrets in South-Central South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the Rosebud Sioux Tribe (Tribe), the U.S. Forest Service, and the U.S. Bureau of Indian Affairs, will reintroduce endangered black-footed ferrets (*Mustela nigripes*) into south-central South Dakota on the Rosebud Sioux Reservation. The purposes of the reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. We may release surplus captive-raised or wild-born black-footed ferrets annually for several years until a self-sustaining population is established. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Rosebud Sioux Reservation black-footed ferret population will be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). We will manage this population under provisions of this special rule. An environmental assessment and finding of no significant impact have been prepared on this action.

DATES: The effective date of this rule is May 16, 2003.

ADDRESSES: You may inspect the complete file for this rule during normal business hours at the Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501, or telephone (605) 224–8693. You must make an appointment in advance if you wish to inspect the file.

FOR FURTHER INFORMATION CONTACT: Scott Larson or Pete Gober at the above address, telephone (605) 224–8963, extensions 27 and 24, respectively.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Act in 1982 with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.'' On the basis of the best available information, we must determine whether an experimental population is ''essential'' or ''nonessential'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. ''Take'' is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition on take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and thus section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individual animals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, wild progeny from other NEPs (and which also originated from captive sources)

may be directly translocated to the reintroduction site.

2. *Biological:* The black-footed ferret is a member of the Mustelid or weasel family; has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length; and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, extends over 12 western States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to Mexico and Texas (Anderson *et al.*, 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.*, 1969, updated 1974; Forrest *et al.*, 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.*, 1986), and ferrets with young have been documented only in the vicinity of active prairie dog colonies. Historically, black-footed ferrets have been reported in association with black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.*, 1986).

Significant reductions in both prairie dog numbers and distribution occurred during the last century due to widespread poisoning of prairie dogs, the conversion of native prairie to farmland, and outbreaks of sylvatic plague, particularly in the southern portions of the ranges of several species of prairie dog in North America. Sylvatic plague arrived from Asia in approximately 1900 (Eskey and Haas, 1940). It is an exotic disease foreign to the evolutionary history of prairie dogs, which have little or no immunity to it. Black-footed ferrets also are highly susceptible to sylvatic plague (Williams *et al.*, 1991 and Williams *et al.*, 1994). This severe reduction in the availability of their principal prey species, in combination with other factors such as secondary poisoning from toxicants ingested by prairie dogs, resulted in the near extinction of the black-footed ferret in the wild by the early 1970s (U.S. Fish and Wildlife Service, 1988).

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared (Henderson *et al.*, 1969, updated 1974). As a result, we believed the species to be extinct. However, in 1981, a small population was discovered near Meeteetse, Wyoming (Schroeder and Martin, 1982). In 1985–86, the Meeteetse population declined to only 18 animals due to an outbreak of sylvatic plague and canine distemper (U.S. Fish and Wildlife Service, 1988). Following this critical decline, the remaining individuals were taken into captivity in 1986–1987 to serve as founders for a captive propagation program. Since that time, captive-breeding efforts have been highly successful and have facilitated ferret reintroductions over a broad area of formerly occupied range. Today, the captive population of juveniles and adults annually fluctuates between 300 and 600 animals depending on time of year, yearly reproductive success, and annual mortalities. The captive ferret population is currently divided among six captive-breeding facilities throughout the United States and Canada, with a small number on display for educational purposes at several facilities. Also, 65 to 90 ferrets are located at several field-based captive-breeding sites in Arizona, Colorado, Montana, and New Mexico.

3. *Recovery Goals/Objectives:* The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service, 1988) contains the following recovery objectives for reclassification of the species from endangered to threatened:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991 (achieved);

(b) Establishing a prebreeding population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010 (ongoing); and,

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range (ongoing).

Although several reintroduction efforts have occurred throughout the ferret's range, populations may have become self-sustaining at only one site in South Dakota (Lockhart, Black-footed Ferret Coordinator, pers. comm. 2002).

We can reclassify the black-footed ferret from endangered to threatened status when the recovery objectives listed above have been achieved, assuming that the mortality rate of established populations remains at or below a rate at which new populations become established or increase. We have been successful in rearing black-footed ferrets in captivity, and, in 1997, we reached captive-breeding program objectives.

In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event (*e.g.*, contagious disease) eliminating the entire captive population. Additional breeding centers were added later, and presently there are six separate subpopulations in captivity. Current recovery efforts emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for use in reintroduction areas.

4. *Reintroduction Sites:* The Service, in cooperation with western State and Federal agencies, Tribal representatives, and conservation groups, evaluates potential black-footed ferret reintroduction sites and has previously initiated ferret reintroduction projects at several sites within the historical range of the black-footed ferret. The first reintroduction project occurred in Wyoming in 1991, and subsequent efforts have taken place in South Dakota and Montana in 1994, Arizona in 1996, a second effort in Montana in 1997, Colorado/Utah in 1999, a second site in South Dakota in 2000, and Mexico in 2001. The Service and the Black-footed Ferret Recovery Implementation Team (comprising 27 State and Federal agencies, Native American tribes, and conservation organizations) have identified the Rosebud Sioux Reservation (Reservation) as a high-priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plague (Black-footed Ferret Recovery Implementation Team, 2000).

In the early 1990s, the Bureau of Indian Affairs (1995) estimated the acreage of prairie dog colonies on Rosebud Tribal Trust lands at 18,000 hectares (ha) (45,000 acres (ac)). In the mid-1990s, the Tribe evaluated a black-footed ferret reintroduction effort and completed some of the activities (*i.e.*, habitat evaluations) necessary to begin such reintroduction efforts. In 2001, the Tribe began additional activities to work toward ferret reintroduction and has worked with the Service to gather information necessary to establish an NEP designation for any ferret reintroductions that may occur.

(a.) *Rosebud Sioux Reservation Experimental Population Reintroduction Area:* The area designated as the Rosebud Sioux Reservation Black-footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties will be considered part of an NEP. Within the Experimental Population Area, the primary

reintroduction area will be in large black-tailed prairie dog complexes located in Todd County near the town of Parmelee. The Town of Rosebud is approximately 10-air miles away and is the location of the Rosebud Sioux Tribal offices. Rosebud is approximately 160 kilometers (100 miles) south of Pierre, the capital of South Dakota.

The Experimental Population Area supports at least two large complexes of black-tailed prairie dog colonies located within the four-county area. These counties encompass approximately 1,391,862 ha (3,437,900 ac). Approximately 26 percent or 356,411 ha (880,336 ac) of the Experimental Population Area is Tribal and Allotted Trust lands of the Rosebud Sioux Tribe. The majority of this Tribal and Allotted Trust land is native rangeland used for grazing.

Approximately 70 percent of the land within the Experimental Population Area is owned by private landowners, although less than 20 percent of the land in the primary reintroduction area is privately owned. No ferrets will be released on private lands. Designating reintroduced ferrets as an NEP should minimize potential issues that may arise with a reintroduction in the vicinity of private lands. The Service, Tribe, and other cooperators agree that, if ferrets disperse onto private lands, program officials will capture and translocate the ferrets back to Tribal lands if requested by the landowner or if necessary for the protection of the ferrets. Any activity needing access to private lands will be conducted only with the permission of the landowner.

Black-footed ferret dispersal to and occupation of areas outside of the Experimental Population Area is unlikely to occur toward the east, north, and south due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (*i.e.*, large contiguous prairie dog colonies), cropland barriers (*e.g.*, expansive cultivation over the eastern portion of the Experimental Population Area), and physical barriers (*e.g.*, the Missouri River to the east). Any expansion westerly from the reintroduction site will be handled by recapturing ferrets, upon request by a landowner, and bringing them into Experimental Population Area or handled through future cooperative efforts with the Pine Ridge Indian Reservation. The Tribe estimates a minimum of approximately 6,000 ha (15,000 ac) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in a localized area in northwestern Todd County and could support over 150 ferret families (characterized as an adult female, 3 kits, and one-half adult male; *i.e.*, 1 adult male for every 2 adult females) (Biggins *et al.*, 1993). Large, contiguous prairie dog colonies and the absence of physical barriers between prairie dog colonies in this portion of the Reservation (the primary ferret release area) should facilitate ferret distribution throughout this complex.

(b.) *Primary Reintroduction Area:* The primary reintroduction area within the Experimental Population Area will occur on prairie dog colonies near Parmelee, in northwestern Todd County. The last remaining population of ferrets in South Dakota was known to exist in this area and adjacent Mellette County until the early 1970s (Henderson *et al.*, 1969, updated 1974). This population was studied and monitored extensively until it disappeared from the wild by 1974 (Henderson *et al.*, 1969, updated 1974). During monitoring efforts of this ferret population in the 1960s, researchers located eight road-killed ferrets during their years of work (Hillman and Linder, 1973). No road-killed ferrets have been turned in or noted from that area since the population was believed extirpated in the early 1970s. There have been many ferret surveys conducted in this area in the 1980s and 1990s with no ferrets being located (Hanebury, 1988; Bureau of Indian Affairs, 1995). The Tribe conducted additional ferret surveys in 2002 and did not locate any ferrets (Lonewolf, Rosebud Game Fish and Parks, pers. comm. 2002).

Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework developed by the Tribe, in cooperation with the Bureau of Indian Affairs, the Service, and landowners/land managers. The Service will reevaluate ferret reintroduction efforts in the Experimental Population Area should any of the following conditions occur:

(i) Failure to maintain sufficient habitat on specific reintroduction areas to support at least 30 breeding adults after 5 years.

(ii) Failure to maintain sufficient prairie dog habitat in the primary reintroduction area as available in 2002.

(iii) A wild ferret population is found within the Experimental Population Area following the initial reintroduction and prior to the first breeding season. The only black-footed ferrets currently occurring in the wild result from reintroductions in Arizona, Colorado/Utah, Montana, South Dakota, Wyoming, and Mexico. Consequently, the discovery of a black-footed ferret population at the Experimental Population Area prior to the reintroduction would confirm the presence of a new population and would prevent designation of an experimental population for the area.

(iv) Discovery in any animal on or near the reintroduction area 6 months prior to the scheduled release of an active case of canine distemper or any other disease contagious to black-footed ferrets that the cooperators believe may compromise the reintroduction.

(v) Fewer than 20 captive black-footed ferrets are available for the first release.

(vi) Funding is not available to implement the reintroduction phase of the project on the Reservation.

(vii) Land ownership changes significantly or cooperators withdraw from the project.

All the above conditions will be based on information routinely collected by us or the Tribe (*see* ''Paperwork Reduction Act'' under the REQUIRED DETERMINATIONS section).

5. *Reintroduction Procedures:* In conformance with standard black-footed ferret reintroduction protocol, no fewer than 20 captive-raised or wild-translocated black-footed ferrets will be released in the Experimental Population Area in the first year of the program, and 20 or more animals will be released annually for the next 2 to 4 years. We anticipate releasing 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Reservation within 5 years. Released ferrets will be excess to the needs of the captive-breeding program and their use will not affect the genetic diversity of the captive ferret population (ferrets used for reintroduction efforts can be replaced through captive breeding). In the future, it may be necessary to interchange ferrets from established, reintroduced populations to enhance the genetic diversity of the population on the Experimental Population Area.

Recent studies (Biggins *et al.*, 1998; Vargas *et al.*, 1998) have documented the importance of outdoor ''preconditioning'' experience on captive-reared ferrets prior to release in the wild. Ferrets exposed to natural prairie dog burrows in outdoor pens and natural prey prior to release survive in the wild at significantly higher rates than do cage-reared, non-preconditioned ferrets. At a minimum, all captive-reared ferrets released within the Experimental Population Area will receive adequate pre-conditioning treatments at existing pen facilities in South Dakota or other western States. In addition, we may translocate wild-born ferrets (from other NEPs with self-sustaining populations of ferrets) to the Experimental Population Area.

The Tribe will develop specific reintroduction plans and submit them in a proposal to the Service as part of an established, annual black-footed ferret allocation process. Ferret reintroduction cooperators submit proposals by mid-March of each year, and the Service makes preliminary allocation decisions (numbers of ferrets provided to specific projects) by May. Proposals submitted to the Service include updated information on habitat, disease, project/ferret status, proposed reintroduction and monitoring methods, and predator management. In this manner, the Service and reintroduction cooperators evaluate the success of the prior year's efforts and apply current knowledge to various aspects of reintroduction efforts, thereby providing greater assurance of long-range reintroduction success.

We will transport ferrets to identified reintroduction areas within the Experimental Population Area and release them directly from transport cages into prairie dog burrows. Depending on the availability of suitable vaccine, we will vaccinate released animals against certain diseases (especially canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with passive integrated transponder tags (PIT tags), and we may promote radio-telemetry studies to document ferret behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the released ferrets could die during the first year of release. Mortality is usually highest during the first month following release. In the first year of the program, a realistic goal is to have at least 25 percent of the animals survive the first winter. The goal of the Reservation reintroduction project is to establish a free-ranging population of at least 30 adults within the Experimental Population Area within 5 years of release. At the release site, population demographics and potential sources of mortality will be monitored on an annual basis (for up to 5 years). We do not intend to change the nonessential designation for this experimental population unless we deem this reintroduction a failure or the black-footed ferret is recovered in the wild.

6. *Status of Reintroduced Population:* We determine this reintroduction to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) is protected against the threat of extinction from a single catastrophic event by housing ferrets in six separate subpopulations. As a result, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species is 240 adult ferrets maintained in the captive-breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any use of animals for reintroduction efforts will not affect the overall genetic diversity of the species.

(c) Captive-breeding can replace any ferrets lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the captive-breeding population are available for reintroduction.

This reintroduction will be the ninth release of ferrets back into the wild. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, Colorado/Utah (a single reintroduction area that overlays both States), and north-central South Dakota. A population of ferrets also has been established in Mexico. Reintroductions are necessary to further the recovery of this species. The NEP designation alleviates landowner concerns about possible land use restrictions. This nonessential experimental designation provides a flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners are unaffected.

7. *Location of Reintroduced Population:* Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since the mid-1980s, black-footed ferret surveys have been conducted in the Experimental Population Area or close by, and no wild ferrets have been located (Hanebury, 1988; Bureau of Indian Affairs, 1995; Lonewolf, Rosebud Game Fish and Parks, pers. comm. 2002). Over 120,000 ha (300,000 ac) of prairie dog colonies were surveyed for black-footed ferrets in the mid-1980s during a prairie dog control effort on the Oglala Sioux Tribe's Pine Ridge Indian Reservation (Superintendent Memorandum, 1989). No ferrets were located. In addition to these surveys, the Tribe and others have spent many hours surveying prairie dog colonies at the primary reintroduction site (Hanebury, 1988; Bureau of Indian Affairs, 1995). No ferrets or signs of ferrets (*e.g.*, skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present in the Experimental Population Area, and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring should remain in the Experimental Population Area due to the presence of prime habitat (*i.e.*, lands occupied by prairie dog colonies) and surrounding geographic barriers. We will capture any ferret that leaves the Experimental Population Area, attempt to identify its origin, and either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the primary reintroduction area but remains within the Experimental Population Area and occupies private property, the landowner can request its removal. Ferrets will remain on private lands only when the landowner does not object to their presence there.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. Any ferret found outside the Experimental Population Area is considered endangered, as provided under the Act. We will undertake efforts to confirm whether any ferret found outside the Experimental Population Area originated from captive stock. If the animal is unrelated to members of this or other experimental populations (*i.e.*, it is from non-captive stock), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the captive population. Existing contingency plans allow for the capture and retention of up to nine ferrets shown not to be from any captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area, and if landowner permission is granted, we will move the ferret back to habitats that support the primary population(s) of ferrets.

8. *Management:* This reintroduction is undertaken in cooperation with the Rosebud Sioux Tribe, the Bureau of Indian Affairs, and the Forest Service in accordance with the ''Cooperative Management Plan for Black-footed Ferrets, Rosebud Sioux Reservation.'' Copies of the Cooperative Management Plan may be obtained from the Rosebud Sioux Tribe, Game, Fish and Parks Department, P.O. Box 430, Rosebud, South Dakota 57570. In the future, we will evaluate whether other black-footed ferret reintroductions are feasible within the Experimental Population Area. Cooperating Tribes, agencies, and private landowners will be involved in the selection of any additional sites.

Management considerations of this reintroduction project include:

(a) *Monitoring:* Several monitoring efforts will occur during the first 5 years of the program. We will annually monitor prairie dog distribution and numbers, and the occurrence of sylvatic plague. Testing resident carnivores (*e.g.*, coyotes) for canine distemper will begin prior to the first ferret release and continue each year. We will monitor released ferrets and their offspring annually using spotlight surveys, snowtracking, other visual survey techniques, and possibly radio-telemetry on some individuals. The surveys will incorporate methods to monitor breeding success and long-term survival rates.

Through public outreach programs, we will inform the public and other appropriate State and Federal agencies about the presence of ferrets in the Experimental Population Area and the handling of any sick or injured ferrets. To meet our responsibilities to treat the Tribe on a Government-to-Government basis, we will request that the Tribe inform Tribal members of the presence of ferrets on Reservation lands and the proper handling of any sick or injured ferrets that are found. The Tribe will serve as the primary point of contact to report any injured or dead ferrets. Reports of injured or dead ferrets also must be provided to the Service Field Supervisor (*see* **ADDRESSES** section). It is important that we determine the cause of death for any ferret carcass found. Therefore, we request that discovered ferret carcasses not be disturbed but reported as soon as possible to appropriate Tribal and Service offices.

(b) *Disease:* The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to releasing ferrets, we will establish the presence or absence of canine distemper in the release area by collecting at least 20 coyotes (and possibly other carnivores). Sampled predators will be tested for canine distemper and other diseases.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into core ferret release areas. Any dead mammal or any unusual behavior observed in animals found within the area should be reported to us (*see* **ADDRESSES** section). Efforts are under way to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague in prairie dog towns will take place before and during the reintroduction effort, and annually thereafter.

(c) *Genetics:* Ferrets selected for reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases may correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity that is possible from the founder ferrets. The eventual interchange of ferrets between established populations found elsewhere in the western United States will ensure that genetic diversity is maintained to the extent possible.

(d) *Prairie Dog Management:* We will work with the Tribe, affected landowners, and other Federal and State agencies to resolve any management conflicts in order to maintain: (1) Sufficient prairie dog acreage and density to support no less than 30 adult black-footed ferrets; and (2) suitable prairie dog habitat on core release areas at or above 2002 survey levels.

(e) *Mortality:* We will only reintroduce ferrets that are surplus to the captive-breeding program. Predator control, prairie dog management, vaccination, ferret preconditioning, and improved release methods should reduce mortality. Public education will help reduce potential sources of human-caused mortality.

The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as recreation, livestock grazing, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a ferret within the Experimental Population Area provided that the take is unintentional and was not due to negligent conduct. Such conduct will not constitute ''knowing take'', and we will not pursue legal action. However, when we have evidence of knowing (*i.e.*, intentional) take of a ferret, we will refer matters to the appropriate authorities for prosecution. Any take of a black-footed ferret, whether incidental or not, must be reported to the local Service Field Supervisor (*see* **ADDRESSES** section) and should be reported to the Tribe as primary point of contact for this NEP. We expect levels of incidental take to be low since the reintroduction is compatible with existing land-use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, and other places, black-footed ferrets can be killed by motor vehicles and dogs (Hillman and Linder, 1973; Schroeder and Martin, 1982). We expect a rate of mortality similar to what was documented at Meeteetse, and, therefore, we estimate a human-related annual mortality rate of about 12 percent or less of all reintroduced ferrets and their offspring. If this level is exceeded in any given year, we will develop and implement measures to reduce the level of mortality.

(f) *Special Handling:* Service employees and authorized agents acting on their behalf may handle black-footed ferrets for scientific purposes; to relocate ferrets to avoid conflict with human activities; for recovery purposes; to relocate ferrets to other reintroduction sites; to aid sick, injured, and orphaned ferrets; and to salvage dead ferrets. We will return to captivity any ferret we determine to be unfit to remain in the wild. We also will determine the disposition of all sick, injured, orphaned, and dead ferrets.

(g) *Coordination with Landowners and Land Managers:* The Service and cooperators identified issues and concerns associated with this ferret reintroduction before the development of the proposed rule. The reintroduction also has been discussed with potentially affected State agencies and landowners within the release area. Affected Tribes, State agencies, landowners, and land managers have indicated support for the reintroduction if ferrets released in the Experimental Population Area are established as an NEP and if land use activities in the Experimental Population Area are not constrained without the consent of affected landowners.

(h) *Potential for Conflict with Grazing and Recreational Activities:* We do not expect conflicts between livestock grazing and ferret management. Grazing and prairie dog management on private lands within the Experimental Population Area will continue without additional restriction during implementation of the ferret recovery activities. With proper management, we do not expect adverse impacts to ferrets from hunting, prairie dog shooting, prairie dog control, and trapping of furbearers or predators in the Experimental Population Area. If proposed prairie dog shooting or control locally may affect the ferret's prey base within the primary release area, State, Tribal, and Federal biologists will determine whether ferrets could be impacted and, if necessary, take steps to avoid such impacts. However, because of the NEP designation, these steps will be voluntary measures since any recommendations by biologists will be advisory only. If private activities impede the establishment of ferrets, we

will work closely with the Tribe and landowners to suggest alternative procedures to minimize conflicts.

(i) *Protection of Black-footed Ferrets:* We will release ferrets in a manner that provides short-term protection from natural (*e.g.*, predators, disease, lack of prey base) and human-related sources of mortality. Improved release methods, vaccination, predator control, and management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize human-related sources of mortality. We will work with the Tribe and landowners to help avoid certain activities that could impair ferret recovery.

(j) *Public Awareness and Cooperation:* We will inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. The designation of the NEP for the Reservation and adjacent areas will provide greater flexibility in the management of the reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and other interests in the affected area.

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the Experimental Population Area will further the conservation of the species.

Previous Federal Action

The proposal to designate a NEP in south-central South Dakota was published in the **Federal Register** on September 11, 2002 (67 FR 57558) concurrent with a notice of a public hearing on September 26, 2002 at the Multi-Cultural Center in Mission, South Dakota. Informational meetings regarding the Rosebud ferret reintroduction effort were held on August 13, 15, and 16, 2002, at He Dog, Parmelee, and Rosebud Communities in Todd County, South Dakota and on August 29, 2002, at the Rosebud Casino located on the Rosebud Sioux Reservation. In addition, we have held numerous meetings with the various Tribal Council members and other interested parties throughout this rulemaking process.

Peer Review

In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review (Peer Review Policy), we requested the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information for this NEP rule. Reviewers were asked to review the proposed rule and the supporting data, to point out any mistakes in our data or analysis, and to identify any relevant data that we might have overlooked. We did not received any requests for substantive changes from these reviewers, but we did receive comments that the proposal had merit and recommendations of support.

Summary of Comments and Recommendations

The September 11, 2002, proposed rule and associated notifications requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment and advertising the public hearing on the proposal were published in South Dakota newspapers and broadcast on local radio stations in the reintroduction area. These included the *Todd County Tribune* in August and September 2002, and KINI radio announcements in August 2002.

The Service also mailed the proposed rule to 29 people representing individuals; State, Federal, and local governments; corporations; and nongovernmental organizations affiliated with environmental, grazing, and recreational interests in South Dakota. This mailing list was from previous meetings and open houses we conducted for other ferret reintroduction efforts in South Dakota. A total of seven written comments were received during the comment period.

In addition, we received seven comment letters prior to publication of the proposed rule. These were mainly letters encouraging the Service and the Tribe to proceed with a reintroduction effort on the Rosebud Reservation. All seven comment letters received prior to the publication of the proposed rule supported the reintroduction effort. Of the seven comment letters received during the comment period, two were opposed to the reintroduction efforts, three expressed concerns about the process of designating a 10(j) area and/or about prairie dogs and various control options, and two commenters supported the Rosebud reintroduction effort.

As mentioned above in ''Previous Federal Actions,'' we also hosted informational meetings and a public hearing to explain this rulemaking. At the informational meetings, most participants were not supportive of a ferret reintroduction effort. At the public hearing conducted a few weeks after the informational meetings, the Tribe was able to discuss their entire Prairie Management Plan, of which the ferret reintroduction is one component. Many of the concerns expressed at the informational meetings, such as management of prairie dogs, loss of revenue from prairie dogs, and range improvements, are addressed in the Rosebud Prairie Management Plan. Consequently, attendees at the public hearing voiced few comments against the ferret reintroduction. However, it must be noted that very few (five) people provided comments at the public hearing. Most of the attendees asked questions and left without providing verbal or written comments during the public hearing. Most of the written and verbal comments received addressed the potential for the designation to interfere with current and proposed land uses within the experimental population boundary, the loss of revenue associated with prairie dog colonies, and the concern that the Service may change the NEP designation in the future. The following summary addresses the written and verbal comments received during the informational meetings, public hearing, and comment period. Our response to each issue is given below.

Issue 1: Some commenters were concerned that the Service will change the NEP designation in the future.

Service Response: As stated under ''5. Reintroduction Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this final rule, we do not expect to change the designation unless the reintroduction effort fails or the species recovers. Presently, there are no proposals by the Service, or any requests on the part of other agencies or nongovernmental organizations, to amend this or any of the prior designations. Consequently, we anticipate that the NEP designation for south-central South Dakota will continue in the future. If the release fails, we may abandon the NEP designation because such a designation is unnecessary given the absence of the species in the area. Success under an NEP designation will argue against upgrading the designation to essential, or reinstating an endangered or threatened designation because of potential conflicts with ongoing activities in the area. If the Service and cooperating agencies are able to recover a species under an NEP designation, then we will have no cause to increase

the degree of protection allowed under the Act. In any case, making any change to the NEP designation will require a new proposed rule, a public comment period, public meetings, National Environmental Policy Act compliance, and other documentation prior to publication of a final rule to change or abandon the designation.

Issue 2: Some commenters raised concerns that ferrets may disperse from their release site, potentially affecting land uses in areas outside the release area, and cause the Service to impose stricter rules governing resource development activities outside the boundaries of the Experimental Population Area.

Service Response: Investigations of black-footed ferret dispersal at existing experimental release sites and research conducted at Meeteetse, Wyoming, confirm that ferret dispersal to areas outside of active prairie dog colonies is rare (Forrest *et al.*, 1985). Ferrets are not known to establish residence away from active prairie dog colonies (Henderson *et al.*, 1996 updated 1974; Hillman and Linder, 1973). Recent modifications to ferret husbandry techniques have been successful in developing captive-reared animals that stay nearer to release sites than the ferrets raised in captivity and released in earlier trials. The Rosebud Experimental Population Area encompasses sufficient prairie dog colonies believed to be necessary for long-term occupation by ferrets. Consequently, we believe it is unlikely that ferrets will disperse to and establish permanent residence within areas outside the Experimental Population Area. Contingencies stated earlier under ''7. Location of Reintroduced Population'' of the **SUPPLEMENTARY INFORMATION** section in this final rule allow for capture and return of ferrets to the Experimental Population Area, should this occur.

Issue 3: Some commenters expressed their opinion that releases should only occur on Rosebud Trust lands or lands of individuals who are cooperating with the Rosebud Sioux Tribe.

Service Response: Black-footed ferrets will only be released on Rosebud Trust lands and deeded land of those individuals who choose to cooperate with the Rosebud Sioux Tribe in this reintroduction.

Issue 4: Some commenters suggested that Gregory and Tripp Counties should not be included as part of the Experimental Population Area.

Service Response: The primary reintroduction area for ferrets in the Rosebud Experimental Population Area will occur in Todd County. Including Gregory, Mellette, and Tripp Counties in the Experimental Population Area only means that, if a ferret were to be located in those counties, it will be considered part of the NEP. The Tribe also has significant acreages of Trust land in those counties, but there is no intent to reintroduce ferrets in those counties. Including those counties will block-clear the area for prairie dog control purposes as well. Congress amended the Endangered Species Act to incorporate section 10(j) to enhance the opportunity for release of federally listed species on private lands. However, we believe that including most of Rosebud Trust lands within the Experimental Population Area will provide the flexibility for management of ferrets sought by the Tribe and the Service. The number of prairie dog colonies in Gregory and Tripp Counties is far smaller than in the proposed reintroduction site, and ferrets are not expected to inhabit those counties.

Issue 5: Some commenters expressed concern that the process has proceeded too fast and more comment time is needed.

Service Response: The Service and the Rosebud Sioux Tribe have been discussing ferret reintroduction on the Rosebud Reservation since 1996. Considerable progress was made toward that effort and Tribal resolutions were passed at that time, but ultimately the Tribe chose not to proceed. In 2001, the Tribe again expressed an interest and, in 2002, asked the Service to complete the process for an NEP designation. The Service has proceeded accordingly and will continue to follow the Tribal Council direction as to whether to proceed with reintroduction efforts. The ferret reintroduction effort will be managed and undertaken by the Rosebud Game, Fish, and Parks Department.

Issue 6: Some commenters stated that black-footed ferrets are not native to this area.

Service Response: The last remaining population of wild black-footed ferrets in South Dakota was known to exist in this area and adjacent Mellette County until the early 1970s (Henderson *et al.*, 1969, updated 1974). The Service and Tribe believe that black-footed ferrets are native to the Rosebud Reservation.

Issue 7: Some commenters state their concern that the proposed rule gives biologists too much authority to change plans and take steps as they deem necessary to avoid impacts to ferrets from activities that may impact prairie dogs.

Service Response: While biologists from different entities (*e.g.*, Service, Rosebud Sioux Tribe, Forest Service) may assist with this reintroduction effort, any comments from a biologist on effects of human activities on private lands that may affect the reintroduced ferrets are advisory in nature under this NEP designation. Prairie dog control on deeded land will remain with the landowners to be managed in compliance with State rules and other applicable Federal and local laws, while prairie dog control on Tribal lands will remain under the authority of the Rosebud Sioux Tribe. Landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs. We do not anticipate any additional restrictions on grazing and prairie dog management on private lands within the Experimental Population Area during implementation of the ferret recovery activities.

Issue 8: Some commenters raised concern that this rule will have a substantial impact on private land and private property rights.

Service Response: Using section 10(j) of the Act to designate a reintroduced population of black-footed ferret as an NEP removes most regulatory burdens that might otherwise be associated with reintroduction of an endangered species. The remaining restrictions are related to intentional or negligent take of ferrets. For instance, deliberately shooting a ferret is a prohibited activity, but prairie dog control actions are not prohibited. In addition, any activity needing access to private lands will be conducted only with the permission of the landowner.

Issue 9: Some commenters suggested that the black-footed ferret should be delisted under the Act after a viable population is established and confined to Badlands National Park.

Service Response: At this time, the recovery goals for completely removing the species from the protections of the Act are not defined, but recovery of this species will depend on more than viable populations of ferrets at Badlands National Park or other National Parks. The Black-footed Ferret Recovery Plan (U.S. Fish and Wildlife Service, 1988) lists the requirements for downlisting the species from endangered to threatened, including ''encouraging the widest possible distribution of reintroduced animals throughout their historical range.'' It is imperative that sites outside of the few National Parks with suitable prairie habitat are used to ensure the widest distribution of this species across its historic habitat and to avoid the possibility of a catastrophic event devastating the species once again.

Issue 10: Some commenters raised concerns that reintroduced ferrets may carry diseases.

Service Response: Under 8(b) ''Disease'' of the **SUPPLEMENTARY INFORMATION** section of this final rule, we address the implications of disease to the success of the actions under this rule. Management plans for ferret reintroductions in South Dakota also have contingencies developed relating to disease management. These contingencies include: Vaccinating all black-footed ferrets prior to release into pre-release conditioning pens, vaccinating black-footed ferret kits at least once prior to release, re-administering medications to ferrets captured during monitoring, discouraging presence of domestic dogs near the pre-conditioning pens, and encouraging routine vaccination of dogs. Management plans also call for continued monitoring of prairie dog populations and certain predators to determine if various disease outbreaks are occurring. It is the Service and Tribe's intent to avoid any disease outbreaks.

Issue 11: Commenters also expressed concern that prairie dog colonies on Tribal Trust lands could result in less revenue generated from grazing receipts for the Tribe and Allottees.

Service Response: The Rosebud Prairie Management Plan proposes to offset the loss of revenue to the Tribe and Allottees by making a payment to those entities with prairie dog colonies on Tribal Trust Lands. The efforts to develop a payment to offset revenue loss from prairie dogs was developed in response to comments received at informational meetings and incorporated into the Rosebud Prairie Management Plan.

Issue 12: Other commenters voiced concern that an incentive payment for prairie dogs might make individuals uninterested in prairie dog control.

Service Response: Any payments for prairie dog acreage will be at the discretion of the Rosebud Sioux Tribe.

Issue 13: Some commenters mentioned that prairie dog control and management is needed before reintroducing ferrets on Rosebud Reservation.

Service Response: The Rosebud Prairie Management Plan will actively manage the existing prairie dog population on Trust lands including prairie dog control and range improvements. Ferret reintroduction will not affect the ability to control prairie dogs in the counties designated as part of the Experimental Population Area.

Issue 14: Some commenters asked what the penalties are for killing black-footed ferrets while driving cars or conducting other activities in the Experimental Population Area.

Service Response: Section 8.(e) ''Mortality'' of this final rule addresses the issue of incidental take of black-footed ferrets within the Experimental Population Area. Basically, any take of a ferret within the experimental population boundary that is incidental to an otherwise lawful activity will not constitute ''knowing take'' for the purposes of this regulation. Consequently, we will investigate any ferret killed by an automobile or by other actions to determine if the death was entirely accidental, or whether there was any intention to deliberately kill the ferret. If the ferret was killed unintentionally and reasonable care was given to avoid the ferret, there will be no penalty for killing of the ferret. All ferret deaths must be reported (see **ADDRESSES** section) so that cause of death can be determined and to assist the Tribe in maintenance of its records on the status of the reintroduced population.

Issue 15: Some commenters asked, ''What are the effects of the proposal on private lands?'

Service Response: This NEP designation will impose no additional restrictions on activities on private lands other than those that currently exist, except for restricting intentional take of the reintroduced ferrets. This NEP designation relaxes the consultation process under section 7 of the Act for any activity requiring Federal approval. For example, prairie dog control on private lands will continue to be subject to the rodenticide label restrictions. Killing a black-footed ferret on private lands requires reporting the incident to the proper authorities for determination of whether the take was incidental or intentional. The black-footed ferret management plans prepared for the Rosebud reintroduction effort predict that all current land uses on private lands in these areas will continue to operate following reintroduction of black-footed ferrets.

Effective Date Justification

We find good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to make this rule effective upon publication. Making this rule effective immediately allows for the timely transfer of suitable black-footed ferret preconditioned animals or those that are wild-born to the Experimental Population Area. The following biological considerations necessitate this approach. Weather conditions may preclude the ability to trap and move wild-born ferrets. The opportunity to release ferrets on Rosebud Tribal Trust lands is dependent upon the availability of animals for translocation, which may be limited in the captive population. The success of the reintroduction effort may be related, at least in part, to the ability to release animals immediately upon publication of this rule. Therefore, we are making this rule effective immediately upon publication.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, the designation of NEP status for the black-footed ferret reintroduction into south-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

Lands within the Experimental Population Area affected by this rule include Gregory, Mellette, Todd, and Tripp Counties in South Dakota. The primary reintroduction area where ferrets will be released is Rosebud Tribal Trust lands in Todd County, and most of the prairie dog colonies within the primary release area are on these lands. Prairie dog colonies off the Rosebud Tribal Trust lands but within the primary reintroduction area and those colonies within Experimental Population Area but outside the primary reintroduction area are not needed for the Reservation reintroduction effort to have a successful site. Land uses on private, Tribal, and State school lands will not be hindered by the proposal, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily other Department of the Interior bureaus (*i.e.*, Bureau of Indian Affairs) and the Department of Agriculture (Forest Service). This rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations

of their recipients. This rule will not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at seven other locations (in Colorado/Utah, Montana, South Dakota, Arizona, and Wyoming) and for other species at numerous locations throughout the nation.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The area affected by this rule consists of the Rosebud Indian Reservation, and private, Federal, and State lands that fall within the south-central tier of counties in South Dakota (Mellette, Todd, Tripp, and Gregory Counties). Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the Experimental Population Area. We do not expect any closures of roads, trails, or other recreational areas. Suspension of prairie dog shooting for ferret management purposes will be localized and prescribed by the Tribe. We do not expect ferret reintroduction activities to affect grazing operations, resource development actions, or the status of any other plant or animal species within the release area. Because participation in ferret reintroduction by private landowners is voluntary, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of the NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these ferrets, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public use of the land.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The NEP designation will not place any additional requirements on any city, county, or other local municipalities. The specific site designated for release of the experimental population of ferrets is predominantly Rosebud Sioux Tribal Trust land administered by the Rosebud Sioux Tribe, who support this project. The State of South Dakota has expressed support for accomplishing the reintroduction through a nonessential experimental designation. Accordingly, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Since this rulemaking does not require that any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a ''significant regulatory action'' under the Act).

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, even if an agency action totally eliminated a reintroduced species from an NEP and jeopardized the species' continued existence, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, regulatory relief can be provided regarding take of reintroduced species within NEPs, and a special rule has been developed stipulating that unintentional take (including killing or injuring) of the reintroduced black-footed ferrets will not be a violation of the Act, when such take is incidental to an otherwise legal activity (*e.g.*, livestock management, mineral development) that is in accordance with Federal, Tribal, State, and local laws and regulations.

Most of the lands within the primary reintroduction area are administered by the Rosebud Sioux Tribe. Multiple-use management of these lands by industry and recreation interests will not change as a result of the experimental designation. Private landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets move to private lands. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets will conflict with existing human activities or hinder public use of the area. The South Dakota Department of Game, Fish, and Parks has previously endorsed ferret reintroductions under NEP designations and continues to do so for this effort. The NEP designation will not require the South Dakota Department of Game, Fish, and Parks to specifically manage for reintroduced ferrets. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As stated above, most of the lands within the primary reintroduction area are Tribal Trust lands, and multiple-use management of these lands will not change to accommodate black-footed ferrets. The designation will not impose any new restrictions on the State of South Dakota. The Service has coordinated extensively with the Tribe and State of South Dakota, and they endorse the NEP designation as the only feasible way to pursue ferret recovery in the area. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the order.

Paperwork Reduction Act

This regulation contains information collection requirements under the Paperwork Reduction Act (and approval by the Office of Management and Budget (OMB)) under 44 U.S.C. 3501 *et seq.* The collected information covers general take or removal, depredation-related take, and specimen collection. Authorization for this information collection has been approved by OMB and has been assigned OMB control number 1018–0095, which expires October 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969. We have prepared an environmental assessment as defined under the authority of NEPA, which is available from the Service office identified in the **ADDRESSES** section. In that environmental assessment, we determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have closely coordinated this rule with the affected tribe, the Rosebud Sioux Tribe. Throughout development of this rule, we have maintained regular contact with the Rosebud Sioux Tribe and have received their support for this reintroduction and NEP designation.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this final rule is not a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

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Authors

The primary authors of this rule are Mike Lockhart and Scott Larson (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the existing entry for ''Ferret, black-footed'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Ferret. black-footed	*Mustela nigripes* ...	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population.	E	1, 3, 433, 545, 546, 582, 646, 703, 737.	NA	NA
Do	.....do	.....do	U.S.A. (specified portions of AZ, CO, MT, SD, UT, and WY, see 17.84(g)(9)).	XN	433, 545, 546, 582, 646, 703, 737.	NA	17.84(g)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by revising paragraphs (g)(1) and (g)(4)(iii) and by adding paragraphs (g)(6)(vii) and (g)(9)(vii) to read as follows, and by adding a map to follow the existing maps at the end of this paragraph (g):

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraph (g)(9)(i) through (vii) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

* * * * *

(4) * * *

(iii) To relocate a ferret that has moved outside the Little Snake Black-footed Ferret Management Area/Coyote Basin Primary Management Zone or the Rosebud Sioux Reservation Experimental Population Area when that relocation is necessary to protect the ferret or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section.

* * * * *

(6) * * *

(vii) Report such taking in the Rosebud Sioux Reservation Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605/224–8693).

* * * * *

(9) * * *

(vii) The Rosebud Sioux Reservation Experimental Population Area is shown on the map of south-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area include all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside the nonessential experimental population area in south-central South Dakota will initially be considered as endangered but may be captured for genetic testing. If necessary, disposition of the captured animal may occur in the following ways:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

* * * * *

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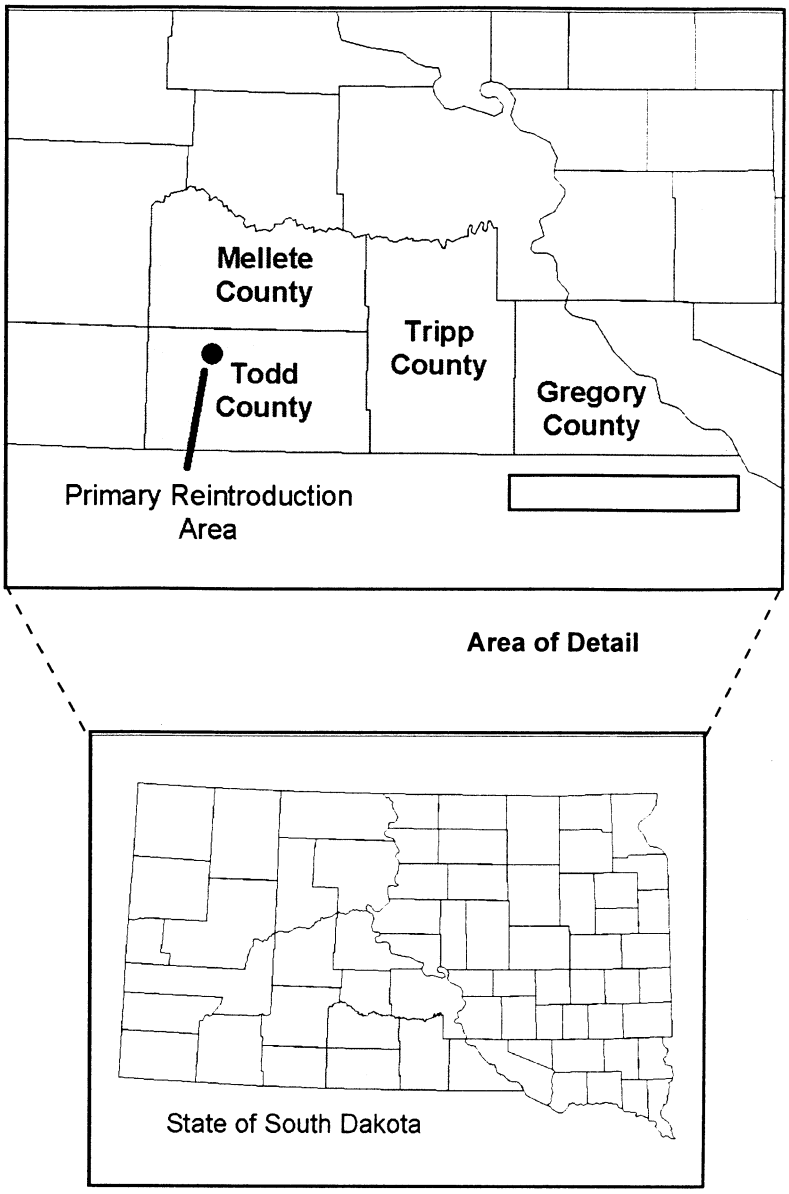

Rosebud Sioux Tribe ITOPA SAPA KIN (Black-footed Ferret) Experimental Population Area - South Dakota

Dated: April 16, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–12199 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000407096–0096–01; I.D. 051203A]

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Commercial Haddock Harvest

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Removal of haddock daily trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) is suspending the haddock daily trip limit for the groundfish fishery for the remainder of the 2003 fishing year. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2003 fishing year under the restrictive daily trip limits. This action is intended to allow fishermen to catch the haddock TAC, without exceeding it.

DATES: Effective May 13, 2003 through April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, 978–281–9218.

SUPPLEMENTARY INFORMATION: Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate target TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE multispecies day-at-sea (DAS) fished and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the trip limit may be adjusted. Further, this section stipulates that NMFS will publish notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

Based on the March, 2002, ''Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish,'' (Report) the appropriate Georges Bank haddock target TAC for the 2002 fishing year was estimated to be 17,337 mt. A subsequent assessment of Georges Bank haddock by the Groundfish Assessment Review Meeting (GARM, October 2002) calculated a stock size similar to that noted in the March, 2002, Report. Therefore, the target TAC for the 2003 fishing year remains at 17,337 mt. Based on recent historical fishing practices, the Regional Administrator has projected that less than 75 percent of the haddock target TAC for the 2003 fishing year will be harvested by April 30, 2004, and has therefore determined that suspending the 3,000–lb (1,360.8–kg) and 5,000–lb (2,268–kg) daily haddock trip limits through April 30, 2004, while retaining the associated 30,000–lb (13,608–kg) and 50,000–lb (22,680–kg) per trip possession limits for May 1 through September 30, 2003, and October 1 through April 30, 2004, respectively, will provide the industry with the opportunity to harvest the target TAC for the 2003 fishing year. In order to prevent the TAC from being exceeded, the Regional Administrator may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12299 Filed 5–13–03; 2:38 pm]

BILLING CODE 3510–22–S